

APPEAL NO. 172430
FILED DECEMBER 14, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Contested case hearings (CCH) were held on May 1 and September 12, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to bilateral shoulder sprain/strain, bilateral shoulder rotator tendinitis, bilateral shoulder impingement, right shoulder partial supraspinatus tear, right shoulder glenoid labral tear, left shoulder partial supraspinatus tear, and bilateral hand hyperhidrosis; (2) the compensable injury of (date of injury), does not extend to bilateral shoulder tendinosis, right shoulder rupture, blurred vision, nerve damage to the bilateral upper or lower extremities, bilateral ulnar sensory neuropathy, bilateral axillary motor neuropathy, left sided peroneal motor neuropathy, right sided tibial motor neuropathy, bilateral sural sensory neuropathy or bilateral saphenous sensory neuropathy; (3) the respondent/cross-appellant (claimant) reached maximum medical improvement (MMI) on August 4, 2016; and (4) the claimant's impairment rating (IR) is 42%.

The appellant/cross-respondent (carrier) appeals the ALJ's decision concerning extent of the compensable injury determined in favor of the claimant and MMI/IR as being contrary to the evidence.

The claimant appeals the ALJ's decision regarding the extent-of-injury issue determined against the claimant, arguing that the evidence supports a finding that all disputed conditions are part of the compensable injury.

DECISION

Affirmed in part as reformed and reversed and remanded in part.

It is undisputed that the claimant sustained a compensable electrocution injury on (date of injury). The parties stipulated, in part, that the compensable injury extends to bilateral upper extremity burns, left lower extremity burns, facial burns, burn wound cellulitis, post-traumatic stress disorder, and an aggravation of pre-existing depression.

EXTENT OF INJURY

The record reflects that the extent-of-injury issue certified for resolution at the CCH, as amended by agreement of the parties, was as follows:

1. Does the compensable injury of (date of injury), extend to and include bilateral shoulder sprain/strain, bilateral shoulder tendonitis, bilateral shoulder impingement syndrome, right shoulder rotator cuff rupture, blurred vision, nerve damage to bilateral upper and lower extremities, and bilateral hand hyperhidrosis?

Following conclusion of the first CCH, the parties agreed to further revise the extent-of-injury issue as follows:

1. Does the compensable injury of (date of injury), extend to and include bilateral shoulder sprain/strain, bilateral shoulder tendonitis, bilateral shoulder rotator tendonitis, bilateral shoulder impingement, right shoulder rupture, blurred vision, nerve damage to bilateral upper extremity/lower extremity, bilateral ulnar sensory neuropathy, bilateral axillary motor neuropathy, right shoulder partial tear supraspinatus tendon, right shoulder posterior glenoid labral tear, left shoulder partial supraspinatus tear, left sided peroneal motor neuropathy, right sided tibial motor neuropathy, bilateral sural sensory neuropathy, bilateral saphenous sensory neuropathy, and bilateral hand hyperhidrosis?

That portion of the ALJ's determination that the compensable injury of (date of injury), extends to bilateral shoulder sprain/strain, bilateral shoulder rotator tendonitis, bilateral shoulder impingement, right shoulder partial supraspinatus tear, left shoulder partial supraspinatus tear, and bilateral hand hyperhidrosis, but does not extend to right shoulder rupture, blurred vision, nerve damage to the bilateral upper or lower extremities, bilateral ulnar sensory neuropathy, bilateral axillary motor neuropathy, left sided peroneal motor neuropathy, right sided tibial motor neuropathy, bilateral sural sensory neuropathy or bilateral saphenous sensory neuropathy is supported by sufficient evidence and is affirmed.

We note that the extent-of-injury issue as revised by agreement of the parties includes right shoulder posterior glenoid labral tear as one of the conditions in dispute; however, in his Finding of Fact No. 3, Conclusion of Law No. 3, Decision and in the first paragraph of the Decision and Order, the ALJ refers to the disputed condition simply as a right shoulder glenoid labral tear. The evidence is sufficient to support a determination that the compensable injury extends to a right shoulder posterior glenoid labral tear. Clearly, the ALJ simply failed to include the term "posterior" as reflected by the evidence and the extent-of-injury issue agreed upon by the parties in his Finding of Fact No. 3, Conclusion of Law No. 3, Decision, and in the first paragraph of the Decision and Order. We accordingly reform Finding of Fact No. 3, Conclusion of Law No. 3, the Decision section and the first paragraph of the Decision and Order to provide that the

compensable injury of (date of injury), extends to a right shoulder posterior glenoid labral tear and affirm the ALJ's determination as reformed.

The ALJ's decision correctly states the extent-of-injury issue as revised by agreement of the parties; however, his Finding of Fact No. 4, Conclusion of Law No. 4, Decision and the first paragraph of the Decision and Order address bilateral shoulder tendinosis, a condition that was not included in the extent-of-injury issue and was not part of the dispute before him. We note further that the ALJ's decision fails to determine whether the compensable injury extends to bilateral shoulder tendonitis, a disputed condition that was made a part of the extent-of-injury issue by agreement of the parties.

Because the ALJ failed to make a determination on each of the conditions made a part of the extent-of-injury issue before him, and because he exceeded the scope of his authority by making a determination on a condition that was not before him, we reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to bilateral shoulder tendinosis and we remand the extent-of-injury issue to the ALJ to make a determination consistent with this decision.

MMI/IR

Given that we have reversed a portion of the ALJ's extent-of-injury determination and remanded that issue to the ALJ to make a determination consistent with this decision, we reverse the ALJ's determination that the claimant reached MMI on August 4, 2016; with a 42% IR, and we remand the issues of MMI and IR to the ALJ to make a determination consistent with this decision. We further note that the certification of MMI and assignment of IR adopted by the ALJ included a left shoulder distal subscapularis tendon partial tear, a condition not made a part of the extent-of-injury issue and not determined to be a result of the compensable injury of (date of injury). Section 401.011(24) defines IR as the percentage of permanent impairment of the whole body resulting from a compensable injury. Rule 130.1(c)(1) states that an IR is the percentage of permanent impairment of the whole body resulting from the current compensable injury.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), extends to bilateral shoulder sprain/strain, bilateral shoulder rotator tendonitis, bilateral shoulder impingement, right shoulder partial supraspinatus tear, left shoulder partial supraspinatus tear, and bilateral hand hyperhidrosis, but does not extend to right shoulder rupture, blurred vision, nerve damage to the bilateral upper or lower extremities, bilateral ulnar sensory neuropathy, bilateral axillary motor neuropathy, left

sided peroneal motor neuropathy, right sided tibial motor neuropathy, bilateral sural sensory neuropathy or bilateral saphenous sensory neuropathy.

We affirm as reformed the ALJ's determination that the compensable injury of (date of injury), extends to a right shoulder posterior glenoid labral tear.

We reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to bilateral shoulder tendinosis and we remand the extent-of-injury issue to the ALJ to make a determination consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on August 4, 2016; with a 42% IR, and we remand the issues of MMI and IR to the ALJ to make a determination consistent with this decision

REMAND INSTRUCTIONS

On remand the ALJ is to make a determination of the extent of the compensable injury supported by the evidence admitted in this case.

After making a determination of the extent of the compensable injury, the ALJ is to make a determination of MMI and IR based on the evidence. If there is not a certification of MMI/IR in evidence that rates the conditions the ALJ determines to be part of the compensable injury, correspondence should be sent to the designated doctor, (Dr. T), if he is still qualified and available to be the designated doctor.

If Dr. T is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury. The certification of MMI should be the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated considering the physical examination and the claimant's medical records, but can be no later than August 4, 2016, the date of statutory MMI. The assignment of an IR is required to be based on the claimant's condition as of the MMI date considering the medical records and the certifying examination and according to the rating criteria of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides) and the provisions of 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)).

The parties are to be provided with the designated doctor's new MMI/IR certification, if any, and are to be allowed an opportunity to respond. The ALJ is then to make a determination on the claimant's MMI and IR for the (date of injury), compensable injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **STANDARD FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

K. Eugene Kraft
Appeals Judge

CONCUR

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge